IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5652 of 2001

in

Criminal Misc. Application No. 6523 of 2000

with

CRIMINAL MISC. APPLICATION NO. 5431 OF 2001

IN

Criminal Misc. Application No. 1722 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BIPIN SHANTILAL PANCHAL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 5652 of 2001

MR AD SHAH for Petitioner No. 1

MR AJ DESAI APP for Respondent No. 1

MR DN PATEL SENIOR CENTRAL GOVERNMENT STANDING COUNSEL for Respondent No. 2

2. Criminal Misc. Application No. 5431 of 2001

MR BB NAIK for petitioner

MR AJ DESAI APP for Respondent No.1

MR DN PATEL SENIOR CENTRAL GOVERNMENT STANDING COUNSEL for Respondent No.2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 31/07/2001

COMMON ORAL JUDGEMENT

1. Rule. Mr. A.J. Desai, learned APP appears and waives the service of notice of rule on behalf of respondent No.1 in both the petitions while Mr. D.N. Patel, learned Senior Central Government Standing Counsel, appears and waives the service of notice of rule on behalf of respondent No.2 in both the petitions.

2. At the outset be it stated that this judgment shall govern the disposal of both the above mentioned Criminal Misc. Applications as common question of law and almost similar facts have arisen in both the petitions and the respondents are also common.

3. By filing these petitions under Section 439 of the Code of Criminal Procedure ('the Code' for short hereinafter), the petitioners who are released on temporary bail for a period of 90 days from the date of their release, in connection with Sessions Case No. 162 of 1994 pending in the Court of the learned Additional City Sessions Judge, Ahmedabad, for the offences punishable under Sections 22, 23 and 24 read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act ('the Act' for short hereinafter) read with Sections 120-B and 120-A of the Indian Penal Code ('IPC' for short hereinafter) vide common order dated May 1, 2001 recorded in Criminal Misc. Application Nos. 6523 of 2000 and 1722 of 2001 by this Court (Coram: C.K. Buch, J.), have prayed to extend the period of bail granted to them by this Court in the above referred to two Criminal Misc. Applications, for unspecified period.

4. For the purpose of deciding these two petitions, it would be advantageous to refer to the facts of Criminal Misc. Application No. 5652 of 2001.

5. The petitioners alongwith other co-accused have been arrested in connection with the offences punishable under Sections 22, 23, 24 and 29 of the Act read with

Sections 120-B and 120-A of the IPC and at present they are facing trial in Sessions Case No. 162 of 1994 before the learned Additional City Sessions Judge (Court No.5) Ahmedabad for the said offences. All the bail applications preferred by the petitioners in past have been rejected on merits.

6. According to the petitioners, the trial has been delayed for a considerable period on account of one Aniruddhsinh Jadeja who has applied for discharge before the learned Additional City Sessions Judge. The learned Additional City Sessions Judge discharged him and, therefore, the prosecution challenged the said order before this Court by filing Criminal Revision Application No. 472 of 1997 and stay of the trial was obtained. Thereafter this Court allowed the Criminal Revision Application vide order dated May 5, 1998 and directed that the accused Aniruddhsinh Jadeja be joined as an accused and the learned Additional City Sessions Judge thereafter framed charge. Again, accused Aniruddhsinh Jadeja applied before the learned Additional City Sessions Judge for dropping proceedings against him. However, the learned Additional City Sessions Judge rejected the said application and hence Aniruddhsinh Jadeja preferred Criminal Misc. Application No. 2284 of 1999 before this Court and again this Court stayed the proceedings of the trial vide order dated April 9, 1999 and thereafter this Court decided the said application in favour of Aniruddhsinh Jadeja by discharging him vide order recorded in Criminal Misc. Application No. 2284 of 1999.

7. According to the petitioners, the prosecution started with the recording of evidence only on July 27, 1998 and the prosecution has examined as many as 9 witnesses from July 27, 1998 to March 22, 1999. The petitioners thereafter preferred criminal Misc. Application No.2898 of 1999 before this Court for bail in view of incarceration in judicial custody for a long duration and this Court (Coram: R.P. Dholakia, J.) by order dated October 29, 1999 rejected the application for bail.

8. Aggrieved thereby the petitioners approached the Supreme Court by way of Special Leave Petition (Criminal) No.223 of 2000. The Supreme Court dismissed the said Special Leave Petition vide order dated March 31, 2000, with a direction that in case the trial is not closed within six months, the petitioners/accused will be at liberty to file fresh bail application. According to the petitioners, during the period of six months the

prosecution could not complete the evidence and hence Criminal Misc. Application No. 6523 of 2000 was preferred by Bipin Shantilal Panchal whereas Achint Navinbhai Patel has filed Criminal Misc. Application No. 1722 of 2001 for releasing them on bail on the ground of alleged violation of the provisions of Article 21 of the Constitution of India. This Court (Coram: C.K. Buch, J.) vide common order dated May 1, 2001 accepted the said petitions and by a speaking order, released the petitioners/accused on temporary bail on certain terms and conditions. While granting temporary bail, the Court observed in para 27 (viii) as under:

> "(viii) shall surrender on expiry of 90th day from the date of their release. It is, however, observed that petitioners will be at liberty to apply for extension of temporary bail before reasonable period of expiry of 90 days, if the trial is not concluded on the date of making such application. In the event of such application being made, the same shall be decided on merits and in accordance with law considering existing circumstances and contingencies."

9. According to the petitioners, they have complied with all the conditions of bail and they have not in any manner violated the liberty granted by this Court. It is further averred by the petitioners that the prosecution had examined in all 33 witnesses upto April 18, 2001. Thereafter from May 14, 2001 to July 18, 2001 the prosecution has examined 13 more witnesses and yet two more officers are to be examined and, therefore, the order passed by this Court releasing the petitioners on temporary bail for 90 days is required to be extended for further period. It is further averred by the petitioners that the petitioners have preferred Special Leave Petition (Criminal) No. 2523 of 2001 before the Supreme Court challenging the order recorded by this Court in Criminal Misc. Application Nos. 6523 of 2000 and 1722 of 2001. However, the said Special Leave Petition was withdrawn in view of the discussion made in paragraph 27 (viii) of the judgment rendered by this Court (Coram: C.K. Buch, J.). The petitioners, therefore, prayed that the period of temporary bail granted by this Court may be extended for unspecified period.

10. M/s. A.D. Shah and B.B. Naik, learned counsel appearing for the petitioners, have argued that right guaranteed under Article 21 of the Constitution of India is violated and, therefore, the petitions submitted by the petitioners should be accepted. It is contended by

them that this Court while recording the common order in Criminal Misc. Application No. 6523 of 2000 and Criminal Misc. Application No. 1722 of 2001 has categorically recorded the finding that the petitioners' right of speedy trial has been violated in view of the delay in the trial and when once this Court has expressed that view it should not be easily disturbed. What was emphasized by the learned counsel for the petitioners was that the trial would not be over within a reasonable time and, therefore, the temporary bail granted to the petitioners is required to be extended.

11. It was also emphatically contended by the learned counsel for the petitioners that when one Single Judge has expressed a view that the right guaranteed under Article 21 of the Constitution of India has been violated, this Court (another Single Judge) cannot take a contrary view and if at all this Court is not agreeable with the view expressed by the learned Single Judge of this Court then the matter is required to be referred to a Division Bench of this Court.

12. To buttress their submission with respect to violation of Article 21 of the Constitution of India, they have placed strong reliance on the decision of the Supreme Court in the case of Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India and others, 1995 SCC (Cri.) 39 and on the judgment rendered by my learned Brother Justice C.K. Buch in Criminal Misc. Application No. 6523 of 2000 and Criminal Misc. Application No. 1722 of 2001 releasing both the petitioners on temporary bail for a period of 90 days.

13. So far as the submission of referring the matter to the Division Bench is concerned, the learned counsel for the petitioners have placed strong reliance on the following judgments of the Supreme Court:

i) State Bank of India v. Labour Enforcement Officer (Central) and another, (1997) 10 SCC 258.
ii) State of Maharashtra v. Keshav Ramchandra Pangare and another, (1999) 9 SCC 479.
(ii) Bajrang Lal Agrawal and others v. State of Bihar and another, (2000) 10 SCC 518.

14. Mr. D.N. Patel, learned Senior Central Government Standing Counsel, appearing for the original complainant submitted that in view of the mandatory provisions of section 37 of the Act the petitioners are not entitled to be released on bail. It was also argued

that the petitioner of Criminal Misc. Application No. 5652 of 2001 has approached the Supreme Court by filing Special Leave Petition (Criminal) No. 2523 of 2001 challenging the order passed by this Court in Criminal Misc. Application No. 6523 of 2000 and Criminal Misc. Application No. 1722 of 2001 by which the petitioners were granted temporary bail for a period of 90 days. The said Special Leave Petition was withdrawn. Therefore, it is clear that the Supreme Court also did not grant bail to the petitioners on the so-called violation of Article 21 of the Constitution. It was further argued by him that so far as the plea for temporary bail is concerned, no case is made out by the petitioners to enlarge them even on temporary bail. According to him, since the petitioners could not point out any ground for enlarging them even on temporary bail, there is no question of extending the period of temporary bail granted to them.

15. In support of the aforesaid submissions, Mr. Patel has placed reliance on the following decisions of the Supreme Court:

(i) Union of India through Central Bureau of Narcotics Commissioner, Lucknow v. Aharwa Deen, 2000 Cri. L.J. 3526;

(ii) Union of India v. Ikram Khan and others, JT 2000 (2) SC 280;

(iii) Supdt., Narcotics Control Bureau, Chennai v. R. Paulsamy, JT 2000 (9) SC 29.

16. I have considered the submissions advanced by the learned counsel appearing of the parties and perused the documents produced alongwith the petition and the judgments cited at the bar.

17. Be it stated at this stage that one Arvind Shivlal Soni, another co-accused of the very Sessions Case had filed Criminal Misc. Application No. 3429 of 2001 before this Court for releasing him on bail on the ground of so-called violation of Article 21 of the Constitution. This Court (Coram: A.M. Kapadia, J.) vide judgment dated June 28, 2001 rejected the petition. This Court had given cogent and concrete reasons for rejecting the said petition preferred by a co-accused and for deciding these two petitions, I derive the reasons from the said judgment.

18. It is true that speedy trial is a right guaranteed to under-trial prisoners under Article 21 of

the Constitution and deprivation of personal liberty without ensuring speedy trial in a given case violates the provisions of Article 21 of the Constitution. However, while considering the grievance raised by the under-trial prisoners regarding the breach of the provisions of Article 21 of the Constitution, relevant facts emerging from the record cannot be ignored. The glaring facts are that the learned Additional City Sessions Judge has framed charge against the petitioners for the offences punishable under Sections 22, 23, 24 and 29 of the Act read with Sections 120B and 120A of the IPC and the maximum punishment provided for the said offences is rigorous imprisonment for 20 years. It may be appreciated that all the pervious bail applications filed by the petitioners came to be rejected on merits on the ground that there is a prima facie case against them.

19. In the case of Supreme Court Legal Aid Committee (supra), there was a delay in constitution of Special Court for trying the offences punishable under the Act and this was found by the Supreme Court as frustrating the objective of Section 36 (1) of the Act and Section 309 of the Code. Further it was found by the Supreme Court that under-trial prisoners were languishing in jail for a period exceeding half of the punishment provided under the Act. In these circumstances, the Supreme Court directed the release on bail those under-trial prisoners who were languishing in jail for no fault on their part. In my view, the principle laid down in the said decision cannot be made applicable to the facts of the present case because the special court is already constituted to try the offences alleged against the petitioners and the petitioners are not in jail for a period exceeding half of the punishment provided under the Act.

20. Further, bail for the offences punishable under the Act cannot be granted in breach of the provisions of Section 37 of the Act. In view of the charges framed by the learned Additional City Sessions Judge against the petitioners and the documents forwarded by the investigating agency alongwith the charge-sheet, it is difficult to conclude that there is any reasonable ground for believing that the petitioners are not guilty of those offences. This is the view expressed by the Supreme Court in (i) Union of India through Central Bureau of Narcotics Commissioner, Lucknow v. Aharwa Deen (supra), (ii) Union of India v. Ikram Khan and others (supra) and (iii) Supdt., Narcotics Control Bureau, Chennai v. R. Paulsamy (supra) and, therefore, in view of the provisions of Section 37 of the Act, the petitioners cannot be granted regular bail.

21. The above discussion makes it clear that no ground is made out by the petitioners to enlarge them on bail on the ground of alleged breach of the provisions of Article 21 of the Constitution of India.

22. From the order passed by my learned Brother Justice C.K. Buch, it is clear that the Court has not granted regular bail to the petitioners and the prayer for regular bail has been specifically rejected. However, the judgment rendered by my learned Brother Justice C.K. Buch makes it evident that a view was expressed by the Court that that Court could have granted regular bail to the petitioners, but considering the sensitivity of the crime and gravity of the offence and the fact that the trial is gradually progressing, regular bail was not granted. In these circumstances, the learned Judge, after considering the prayer made on behalf of the petitioners to enlarge them on temporary bail, has granted only temporary bail and not regular bail.

23. According to me, temporary bail can be granted for temporary purpose and it can be granted only if good case is made out. For example, sickness of the prisoner which cannot be cured at the jail hospital, Civil Hospital or in any hospital in the city and sickness or death of a near or dear relative which can be attended by the prisoner only. The phrase "temporary bail" implies that the bail is granted for a temporary period for a particular purpose and on the achievement of the said purpose the prisoner has to surrender. Releasing on temporary bail pending trial when the prosecution witnesses are being examined is bound to have deleterious effect on the prosecution case and the more stringent the punishment there are more chances of attempt being made to win over the witnesses. In these circumstances, temporary bail cannot be granted for a mere asking which can be granted only on a good case being made out by the petitioners as to why they should be enlarged on temporary bail. According to me, no ground worth the name is made out by the petitioners as to why the temporary bail for 90 days granted by this Court should be extended.

24. I further find from the decisions of the Supreme Court that where the Supreme Court has noticed breach of Article 21 of the Constitution - fundamental right guaranteed to prisoners for speedy trial - the Supreme Court has enlarged such prisoners on bail and has not found any via-media by directing release of such

prisoners on temporary bail and, therefore, in my view, the temporary bail granted to the petitioners cannot be extended when the petitioners have failed to establish breach of the provisions of Article 21 of the Constitution.

25. While exercising the discretion in favour of the petitioners, if a learned Single Judge of this court has directed to release the petitioners on temporary bail for a period of 90 days, one cannot claim that another Single Judge of this Court hearing an application for extension of the said bail period has also to exercise discretion in the same manner as is exercised by the learned Single Judge of this Court earlier, irrespective of the fact scenario.

26. To canvass the proposition that the trial would not be over within a short period and, therefore, the temporary bail granted to the petitioners may be extended, the learned counsel for the petitioners have placed strong reliance on the judgment of the Supreme Court in the case of S.N. Thapa, Addl., Collector of Customs, (Marine & Preventive), Bombay v. State of Maharashtra, 1994 SCC (Cri.) 828. It is true that in the said judgment the Apex Court has directed the appellant to be released on interim bail and the matter was remitted to the Designated Court for reconsideration of the bail application in the light of fresh material that might have been collected against the appellant during investigation. Besides this, the Supreme Court has also observed in para 6 of the said judgment that in the facts and circumstances of the case and on the material, as at present, it appears that there was no legal evidence to prima facie establish that the appellant had assisted either in the smuggling of the goods or of its transportation to Bombay. In the said judgment, the Supreme Court has recorded a finding categorically that there was no legal evidence to connect the accused with the crime and, therefore, released the accused on interim bail and thereafter the matter was remitted to the Designated Court for reconsideration of the bail application in the light of fresh material that might have been collected against the appellant during investigation.

27. So far as the prima facie case is concerned, in the instant case, there is no manner of doubt that there is a strong prima face case against both the petitioners for commission of the offences with which they are charged. Therefore, in my view, the judgment in the case of S.N. Thapa (supra) relied upon by the learned counsel

for the petitioners is of no assistance to the petitioners.

28. Lastly, it was argued that if this Court does not agree with the observations made by learned Single Judge of this Court, then these two petitions are required to be referred to a Division Bench.

29. In this connection, I have perused the judgments in the case of (i) State Bank of India and others (supra), (ii) State of Maharashtra v. Keshav Ramchandra Pangare (supra) and (iii) Bajrang Lal Agrawal and others (supra) relied upon by the learned counsel appearing for the petitioners.

30. There cannot be any dispute with the proposition of law enunciated by the Supreme Court that if a Single Judge does not agree with a view expressed earlier by another Single Judge of the same High Court on an identical point, the matter should be referred to a Division Bench instead of deciding the same. It is true that if a Single Judge of this Court has decided a law point and if another Single Judge of this High Court does not agree with the said law point, on identical issue, then obviously the matter is required to be referred to a Division Bench instead of deciding the same.

31. So far as the case on hand is concerned, my learned Brother Justice C.K. Buch has after considering the scope of Article 21 of the Constitution held that the accused are not entitled to regular bail. However, in view of the peculiar facts and circumstances which were pointed out by the learned counsel for the petitioners, the learned Single Judge was of the view that they should be enlarged on temporary bail for a period of 90 days and, therefore, the petitioners were enlarged on temporary bail for a period of 90 days and the question whether temporary bail granted should be extended or not depends upon the facts of each case and for the determination of such point, question of law does not arises. Therefore, in my view, the submission that both the petitions are required to be referred to a Division Bench has no substance as no law point is required to be decided in these petitions by this Court wherein prayer is for extension of the period of temporary bail granted by the learned Single Judge of this Court.

32. In these circumstances, I am of the opinion that the petitioners are not entitled to any relief based either on the principle of violation of Article 21 of the Constitution or on the ground that since a learned Single

Judge has granted temporary bail for 90 days, the period of temporary bail should be extended by this Court for unspecified period.

33. For the foregoing reasons, both the above petitions fail and accordingly are rejected. Rule is discharged.

34. At this stage, learned counsel for the petitioners urged that the period of temporary bail granted by my learned Brother Justice C.K. Buch may be extended by two weeks so as to enable the petitioners to approach the higher forum or to surrender before the jail authority.

35. I have considered the submissions advanced by the learned counsel appearing for the parties in this behalf and I am of the opinion that if the petitioners are not entitled to be release on regular bail on the ground of so-called violation of Article 21 of the Constitution, this prayer also cannot be extended. Hence, the prayer for extension of temporary bail for two weeks is rejected.

31.7.2001. (A.M. Kapadia, J.)

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